

ESTTA Tracking number: **ESTTA63375**

Filing date: **01/24/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	OMS Investments, Inc.
Granted to Date of previous extension	01/25/2006
Address	10250 Constellation Blvd.Suite 2800 Los Angeles, CA 90067 UNITED STATES
Attorney information	Cory M. Amron Vorys, Sater, Seymour and Pease LLP 1828 L Street, NW11th Floor Washington, DC 20036 UNITED STATES behogue@vssp.com, rsdonnell@vssp.com, wholdach@vssp.com Phone:202-467-8810

Applicant Information

Application No	76616001	Publication date	09/27/2005
Opposition Filing Date	01/24/2006	Opposition Period Ends	01/25/2006
Applicant	FERMANIAN, JOSEPHINE PO BOX 296 WALLED LAKE, MI 48390 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and sevicees in the class are opposed, namely: All-purpose household cleaner
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Attachments	germsbegone.pdf (5 pages)
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Signature	/cory m amron/
Name	Cory M. Amron
Date	01/24/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF:

MARK: **GERMS BEGONE**
SERIAL NO.: **76/616,001**
DATE OF PUBLICATION: **September 27, 2005**

OMS INVESTMENTS, INC.,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
JOSEPHINE FERMANIAN)	
)	
Applicant.)	

NOTICE OF OPPOSITION

OMS INVESTMENTS, INC. (hereinafter "OMS"), a Delaware corporation having a place of business at 10250 Constellation Blvd., Suite 2800, Los Angeles, CA 90067, believes that it is and will be damaged by registration of application Serial No. 76/616,001 for the mark "GERMS BEGONE" for "All-purpose household cleaner" in International Class 3, by Josephine Fermanian (hereinafter referred to as "Applicant"), and hereby opposes the same under the provisions of Section 13 of the Trademark Act of July 5, 1946 (15 U.S.C. § 1063).

As grounds therefor, it is alleged that:

1. OMS and its related companies, licensees and predecessors in business, (all hereinafter referred to as "Opposer"), since long prior to Applicant's filing date of October 12, 2004 and continuing to the present, have been engaged in the business of manufacturing, distributing and selling pesticide, insecticide, animal poisons and barrier devices, herbicides and other lawn and garden products using numerous trademarks containing the term "B-GON."

2. Opposer is the owner of, *inter alia*, the following U.S. Trademark

Registrations and marks:

BRUSH-B-GON, Registration No. 1,301,169, registered October 23, 1984, for pesticides, namely herbicides;

BUG-B-GON, Registration No. 2,073,033, registered June 24, 1997, for insecticides for home and garden use;

GRASS-B-GON (stylized), Registration No. 1,995,777, registered August 20, 1996, for pesticides and herbicides for home and garden use;

PEST-B-GON, Registration No. 433,172, registered September 30, 1946, for parasitocides, namely, insecticides and animal poisons;

WEED-B-GON, Registration No. 903,317, registered December 1, 1970, for herbicides;

WEED-B-GON, Registration No. 2,088,157, registered August 12, 1997, for herbicides mixed with fertilizers for domestic use; and

MOSQUITO-B-GON, Registration No. 2,952,817, registered May 17, 2005, for insecticide for domestic use.

Opposer's registrations are valid and subsisting, all issued by the United States Patent and Trademark Office on the Principal Register of the Act of 1946, and said trademarks are currently in use. Affidavits of continued use and incontestability under §§ 8 and 15 of the Act of 1946 have been filed and accepted for Registration Nos. 2,088,157; 2,073,033; 1,995,777; 1,301,169; 433,172; and 903,317.

3. Opposer has developed a family of "B-GON" marks, which marks are used to identify a line of products for controlling various types of pests and unwanted plants. Applicant's mark comprises the aurally identical and visually similar component "BEGONE."

4. Registration of the mark GERMS BEGONE, Serial No. 76/616,001 should be denied based on Opposer's long prior use and family of registrations of its "B-GON" marks.

The mark sought to be registered by Applicant is confusingly similar to Opposer's marks, and the use of the mark GERMS BEGONE by Applicant is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are those of Opposer or are endorsed, sponsored or otherwise affiliated or connected with Opposer, to the damage and injury of the purchasing public and to the damage and injury of Opposer.

5. The mark GERMS BEGONE that Applicant seeks to register is consistent with Opposer's family of "B-GON" trademarks, in that each of Opposer's marks begins with a type of problem that customers wish to remove or prevent (i.e., germs, grub, pest, weed, mosquito). The similarity is strengthened in particular by Applicant's use of the BEGONE component in a context suggesting that the product will remove a problem that may arise from an unwanted environmental or outdoor thing or activity, thus strengthening the connection to Opposer's goods, all primarily used by consumers to combat unwanted or undesirable things or effects in an environment. The mark GERMS BEGONE and Opposer's family of "B-GON" marks are thus confusingly similar in sound, appearance, and meaning.

6. Opposer, since long prior to the filing date of the GERMS BEGONE application by the Applicant, has spent, and continues to spend, large sums of money in the advertisement and promotion of its goods identified and distinguished by its family of "B-GON" marks, and by reason of such advertising and the high quality of its product carrying such trademarks, Opposer now enjoys valuable goodwill and an enviable reputation with respect to its family of "B-GON" marks.

7. The distinctive line of “B-GON” marks and Opposer’s line of “B-GON” products have attained widespread public recognition and have acquired great value as an identification of the source of goods in or by the Opposer, and said marks distinguish the Opposer’s goods from the products or services of others.

8. The use and registration of GERMS BEGONE by Applicant will cause the purchasing public to assume, erroneously, and to be confused, misled and/or deceived, that Applicant’s goods are another member of or related to the line of “B-GON” products marketed and sold by Opposer, and that they are made by or originate with, are endorsed or sponsored by, or are in some other way associated or connected with the Opposer, all to Opposer’s injury and irreparable damage.

9. The use and registration of GERMS BEGONE by Applicant will dilute the distinctive value of Opposer’s line of “B-GON” marks and products by blurring, all to Opposer’s injury and irreparable damage.

10. For the reasons set forth hereinabove, Opposer believes, and so believing asserts, that the goodwill in its line of “B-GON” marks will be damaged and diluted and that Applicant should be denied the registration of the mark GERMS BEGONE for all goods for which it has made application.

11. By reason of the foregoing, Applicant’s application for GERMS BEGONE for “All-purpose household cleaner” is likely to cause confusion with Opposer’s marks and is thus not registrable under Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)).

WHEREFORE, Opposer prays that this Opposition be sustained and that application Serial No. 76/616,001 for GERMS BEGONE be refused registration.

The filing fee of \$300.00 as provided in Sections 13 and 31 of the Trademark Act of 1946, and in 37 C.F.R. § 2.6(a)(17), has been charged to Deposit Account 22-0585 as part of the electronic filing of this Notice. Please charge any additional fees that may be required to said account.

Please recognize Cory M. Amron, William H. Oldach III, members of the Bar of the District of Columbia, Richard S. Donnell, a member of the Bar of the Commonwealth of Virginia and Christopher S. Adkins, a member of the Bar of the State of Maryland, all with the firm of Vorys, Sater, Seymour, and Pease, LLP, as Opposer's attorneys to prosecute this Notice of Opposition and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications to: Cory M. Amron, Esq., Vorys, Sater, Seymour and Pease LLP, 1828 L Street, NW, 11th Floor, Washington, DC 20036; Telephone (202) 467-8810; Facsimile (202) 467-8900, e-mail: cmamron@vssp.com.

Respectfully submitted,

Date: _____

1/24/06



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